



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Captain Terry L. Smart, USAF--Temporary Lodging  
Expense Allowance  
**File:** B-225262  
**Date:** May 4, 1987

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### DIGEST

An Air Force officer who was transferred from Arkansas to Texas claims a temporary lodging expense allowance based on his continued occupancy of his permanent residence in Arkansas on a rental basis after the date he sold it. The officer continued to occupy the residence as his usual place of abode until the date he actually moved out, however, so that the residence cannot be considered to have been his "temporary" quarters within the meaning of that term under the applicable statutes and regulations. Hence, his claim cannot be allowed.

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### DECISION

The issue presented in this case is whether an Air Force officer who was transferred from Arkansas to Texas may be paid a temporary lodging expense allowance based on his continued occupancy of his permanent residence in Arkansas on a rental basis after the date of his sale of the residence.<sup>1/</sup> In the circumstances presented, we conclude that he is not entitled to payment.

### BACKGROUND

Captain Terry L. Smart, USAF, was transferred from Little Rock Air Force Base, Arkansas, to Reese Air Force Base, Texas, in November 1985. On November 12, 1985, he and his wife sold the house that they had owned and used as their primary residence in Arkansas. They continued to reside in

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<sup>1/</sup> This action is in response to a request for an advance decision from First Lieutenant Marcia K. Johnson, USAF, Chief, Accounting and Finance, Reese Air Force Base, Texas, concerning the propriety of approving a voucher submitted by Captain Terry L. Smart, USAF, 459-11-9987. The request was forwarded here by the Per Diem, Travel and Transportation Allowance Committee after it was approved and assigned PDTATAC Control Number 86-18.

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the house, however, until November 18, 1985, when they departed for Texas.

Captain Smart has indicated that he and his wife paid \$50 per day to rent their residence in Arkansas from the time they sold it on November 12 to the time they vacated it and moved to Texas on November 18. He submitted a voucher claiming a temporary lodging expense allowance of \$50 per day for 4 days from November 13 through November 17.

Claims adjudicators of the Air Force Accounting and Finance Center denied Captain Smart's claim. As the basis for the denial they cited paragraph M4601, Volume 1 of the Joint Travel Regulations, which provides that the lodgings for which the temporary lodging expense allowance is authorized "\* \* \* must, in fact, be a temporary place of residence." The adjudicators concluded that Captain Smart's rental and continued use of his primary residence after its sale could not properly be regarded as the occupancy of "a temporary place of residence" under the regulations.

Captain Smart has expressed disagreement with this reasoning. He suggests that he and his wife were, in fact, occupying the house in Arkansas on a temporary basis from the time they sold it to the time they had to depart for Texas in compliance with his orders. His claim has been forwarded here because of the disagreement.

#### ANALYSIS AND CONCLUSION

Section 404a of title 37, United States Code, provides that under regulations prescribed by the service Secretaries, members of the uniformed services who are ordered to make a change of permanent station within the United States shall be paid or reimbursed for subsistence expenses incurred while occupying temporary quarters incident to their transfer. The statute further provides that the allowance for these expenses may not exceed a period of 4 days.

Implementing regulations in effect during the time at issue in 1985 were contained in Volume 1 of the Joint Travel Regulations. As indicated, paragraph M4601 of those regulations provided that the lodgings for which the temporary lodging

expense allowance is authorized "\* \* \* must, in fact, be a temporary place of residence."<sup>2/</sup>

We have not previously had the occasion to consider the application of these provisions of statute and regulation in situations involving service members making a permanent change-of-station move who sell their permanent residence at their old duty station and then continue to occupy that residence on a rental basis. We note, however, that 37 U.S.C. § 404a was added to the United States Code by the Uniformed Services Pay Act of 1981,<sup>3/</sup> and that the legislative history of that Act contains this statement concerning the purpose of the temporary lodging expense allowance:

"Military members currently incur out-of-pocket expenses associated with government-directed permanent change of station moves. The most significant aspects of these unreimbursed expenses occur at the old and new duty locations when members are forced to pay for commercial food and lodging because of delays in departure or, more frequently, delays in obtaining permanent housing at the new duty station. Unlike Federal civilians, who are authorized up to 30 days of reimbursements for these types of expenses, military members in a permanent change-of-station status within the continental United States now receive no reimbursement, but must use personal funds. Section 11 of the committee bill establishes a Temporary Lodging Expenses (TLE) authority to partially offset the added lodging and subsistence expenses incurred by service members and their dependents in conjunction with permanent change-of-station moves."<sup>4/</sup>

It thus appears that the legislation was designed to provide service members with an allowance similar to temporary

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<sup>2/</sup> The same requirement is now contained in the superseding provisions of paragraph U5705, Volume 1 of the Joint Federal Travel Regulations, which became effective on January 1, 1987.

<sup>3/</sup> Public Law 97-60, § 122(a)(1), October 14, 1981, 95 Stat. 989, 1002.

<sup>4/</sup> S. Rep. No. 146, 97th Cong., 1st Sess. 12, reprinted in 1981 U.S. Code Cong. & Ad News 1484, 1495.

quarters subsistence expenses which are authorized for transferred federal civilian employees.

The language in both the statute applicable to members of the uniformed services and the statute applicable to civilian employees is identical, namely: "\* \* \* while occupying temporary quarters \* \* \*."<sup>5/</sup> Under the regulation governing payment of temporary quarters subsistence expenses for civilian employees, reimbursement for lodgings is generally limited to "\* \* \* lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied when the transfer was authorized."<sup>6/</sup> This regulation was in effect for a considerable period prior to the enactment of the statute authorizing this allowance for members of the uniformed services. Thus, we find that this standard is essentially the same as the one established by regulation for members of the uniformed services that the lodgings "\* \* \* must, in fact, be a temporary place of residence."

Concerning the temporary quarters subsistence expense allowed transferred civilian employees, we have repeatedly and consistently held that under the applicable regulations employees are ordinarily ineligible for reimbursement of their expenses incurred while renting their permanent residence following its sale at their old duty station, notwithstanding that the rental agreement may be temporary in nature and may have been entered into in furtherance of their transfer.<sup>7/</sup> As an exception, we have authorized reimbursement of rental charges assessed against employees in such situations when it is shown that they were forced to remain in possession of the premises beyond the intended departure date due to unforeseen circumstances.<sup>8/</sup> This may occur, for example, when the moving van breaks down on the moving date.<sup>9/</sup> Reimbursement is authorized in those exceptional circumstances under the principle that the employees have ceased to occupy the premises as their usual residence, and may therefore be considered to

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<sup>5/</sup> 37 U.S.C. § 404a and 5 U.S.C. § 5724a.

<sup>6/</sup> Federal Travel Regulations, para. 2-5.2, incorp. by ref., 41 C.F.R. § 101-7.003.

<sup>7/</sup> Gerald L. Modjeska, 56 Comp. Gen. 481 (1977);  
Michael J. Johnson, B-215708, October 11, 1984;  
James P. Driscoll, B-198920, November 28, 1980.

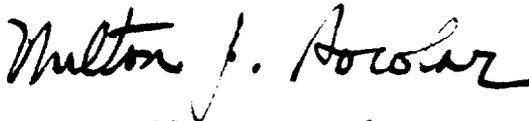
<sup>8/</sup> Patrick T. Schluck, B-202243, August 14, 1981.

<sup>9/</sup> Beverly L. Driver, B-181032, August 19, 1974.

have "constructively vacated" the residence as their primary place of abode.<sup>10/</sup>

In the present case, it appears that Captain and Mrs. Smart sold their house in Arkansas, and arranged to rent it for a short time following the date of the sale, in contemplation of their move to Texas. It further appears that these arrangements were settled in advance of the sale, and that they intended to continue to occupy the house as their permanent and primary place of residence until they actually vacated the premises on the moving day. Hence, we are unable to conclude that the house may properly be considered to have been their "temporary" quarters within the meaning of that term as it appears in the applicable statutes and regulations.

Accordingly, we deny Captain Smart's claim for the temporary lodging expense allowance. The voucher, which may not be approved for payment, will be retained here.



Acting Comptroller General  
of the United States

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<sup>10/</sup> Gerald L. Modjeska, supra, 56 Comp. Gen. at page 482; Quinea D. Minton, B-218886, March 24, 1986.